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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH**

THE SCO GROUP, INC.,

Plaintiff/Counterclaim-Defendant,

v.

INTERNATIONAL BUSINESS
MACHINES CORPORATION,

Defendant/Counterclaim-Plaintiff.

**PLAINTIFF'S NEW RENEWED
MOTION TO COMPEL DISCOVERY**

Case No. 2:03CV0294DAK
Honorable Dale A. Kimball
Magistrate Judge Brooke C. Wells

Plaintiff, The SCO Group, Inc. ("SCO"), respectfully submits this New Renewed Motion to Compel Discovery in response to the Court's Order dated October 12, 2005.

On December 23, 2004, SCO filed a Renewed Motion to Compel Discovery (the "original Motion"). The original Motion became fully briefed on February 25, 2005. In its October 12 Order, this Court explained: "Due to a docketing error, the issue was not scheduled for hearing upon the close of the parties' briefing." (October 12 Order at 2.) Recognizing that discovery had been taken between the parties since February 25, the Court ordered SCO to "file a new motion with the Court, no later than October 21, 2005, removing any items from the motion which may have been provided by IBM in the intervening time." (*Id.* at 3.)

SCO has not removed in this New Motion any items from the original Motion. In the original Motion, SCO moved to compel IBM to produce from the files of its senior executives and its Board of Directors all documents concerning IBM's decision to embrace Linux, and to produce Rule 30(b)(6) witnesses on two particular topics. Discovery taken since December 23, 2004, does not affect SCO's original Motion. Since December 23, 2004:

- IBM has produced forty-five (45) pages of new documents from the files of one IBM senior executive, Nick Bowen.
- IBM has not produced any documents from the files of Samuel Palmisano or Irving Wladawsky-Berger or IBM's Board of Directors.
- The District Court has ruled that SCO is entitled to depose Mr. Palmisano, for four hours. SCO seeks to obtain all relevant documents, including the documents sought in the original Motion, prior to deposing Mr. Palmisano.
- SCO has deposed Mr. Wladawsky-Berger. The sworn testimony that Mr. Wladawsky-Berger was prepared to give, although relevant, is no substitute for documents reflecting his views, both pre- and post-litigation. SCO has also reserved the right to depose Mr. Wladawsky-Berger for a second day.

- SCO has not obtained any significant discovery regarding the subject matter of the two Rule 30(b)(6) topics on which IBM refuses to produce a witness.

Indeed, IBM has not identified to SCO any documents produced, or other discovery taken, since December 23, 2004, that it believes bears on SCO's original Motion.

Considering the foregoing facts, and with the understanding that in its October 12 Order the Court did not in any respect rule on the merits of SCO's original Motion, SCO respectfully submits that its original Motion remains ripe for adjudication on the grounds set forth in the memoranda in support of that Motion.

DATED this 21st day of October, 2005.

Respectfully submitted,

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CERTIFICATE OF SERVICE

Plaintiff, The SCO Group, Inc., hereby certifies that a true and correct copy of the foregoing Plaintiff's New Renewed Motion to Compel was served on Defendant International Business Machines Corporation on the 21st day of October, 2005, by facsimile and U.S. Mail to:

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